IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1435 of 2007

Date of Decision: 2.11.2007

M/s Goel and Company & Ors. ...Appellants

Vs.

Nathu & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.D.V.Sharma Senior Advocate,
with Ms. Sushma Chopra, Advocate,
for the appellants.

Vinod K.Sharma, J. (Oral)

This order shall dispose of the three RSA Nos.143, 1436 and 1437 of 2007 titled M/s Goel and Company & Ors.Vs. Nathu & Anr., M/s Goel and Company & Ors.Vs. Nathu & Anr. and M/s Goel and Company & Anr.Vs. Gurmeet Singh & Anr., as common questions of law and facts are involved in these appeals.

For facility the facts are being taken from RSA No.1435 of

2007 titled M/s Goel and Company & Ors.Vs. Nathu & Anr..

Regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit filed by the plaintiff-respondents for possession after removal of Malba, Jhugis, and other installations including Chimni and all other installations and and constructions made by the defendants has been ordered to be decreed.

The plaintiffs brought a suit for possession on the plea that the property in dispute was leased out to defendant No.1 on lease for 7 years w.e.f. 1.10.1991 to 30.9.1998 for carrying on the business of brick-kiln. It was the case of the plaintiff that the lease was by way of registered lease deed executed between the parties. On the expiry of the period of lease deed as the defendants failed to vacate the premises, a suit for possession was filed.

On notice having been issued the defendants took a plea that no notice under section 106 of the Transfer of Property Act was issued and therefore, the lease not having been terminated the present suit was not competent. It was also the case of the defendants that their status is that of tenants on the principle of holding over and they have got every right to continue in possession till they were dispossessed through due process of law.

Learned trial court by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Shanti Devi Vs. Amal Kumar Banerjee AIR 1981 SC 1550** and the judgment of this Court in the case of

Roshan Vs. The secretary, Government of Haryana Development and Panchayat Department 1991 (1) 88 came to the conclusion that no notice under section 106 of the Transfer of Property Act was required to be issued as the tenancy of the appellants had come to an end by efflux of time. Learned trial court also recorded a finding that there was no material on record showing that the appellant-defendants had become tenants by holding over. Findings recorded by the learned trial court were affirmed by the learned District Judge, Ropar.

Mr.D.V.Sharma, learned senior counsel appearing on behalf of the appellants by placing reliance on the judgment of this court in the case of **Balkar Singh and another Vs. Commissioner Jullundur Division, Jullundur and another 1989 PLJ** 101 contended that as the defendant-respondents have paid rent after the expiry of period of lease, therefore, they were to be treated as tenants on the principle of holding over and their eviction could not be ordered without terminating tenancy by issuing notice under section 106 of the Transfer of Property Act.

The plea of the learned counsel for the appellants cannot be accepted. It is not in dispute that the present suit was filed in the year 1999 and the rent which was alleged to have been paid was in fact paid during the pendency of the suit and after the passing of the decree.

Therefore, it would be seen that the authority relied upon by the learned senior counsel for the appellants has no application to the facts of the present case as in the said case the tenancy was created by the act of

the parties much prior to initiation of ejectment proceedings of the respondents therein. It is also the settled law that mere payment of rent does not amount to creation of tenancy between the parties and thus, merely because certain rent was paid during the pendency of the suit would not be an act creating the tenancy between the parties.

There is no merit in all these three appeals nor any substantial question of law arises in these appeals.

Finding no merit in all these three appeals, are dismissed.

(Vinod K.Sharma)
Judge

2.11.2007
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